IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 916 OF 2004

Vitthal Rakhumai Shikshan Prasarak Mandal & Anr. .... Petitioners

Vs.

Shri Suresh Chimaji Kashid .... Respondent

WITH
WRIT PETITION NO. 2141 OF 2005

Vitthal Rakhumai Shikshan Prasarak Mandal & Anr. .... Petitioners

Vs.

Suresh Chimaji Kashid & Anr. .... Respondents

Mr. Uday P. Warunjikar for the Petitioners
Mr. S.V. Pitre for the Respondents.

CORAM : A.P. DESHPANDE, J.
DATE : 9TH FEBRUARY 2007

JUDGMENT

1) Rule made returnable forthwith. Taken up for hearing by consent of the parties.

2) The Petitioners in both the petitions is a Society registered under the Societies Registration Act so also a Public Trust governed and regulated by Bombay Public Trusts Act. The Petitioner is running a school by name V.M. Manjare Vidyalaya at

Manjarewadi (Pimpal) at Rajgurunagar, Pune. The said school is a secondary school and the service conditions of the employees working in the school are governed by the provisions of The Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 and the rules made thereunder. The Respondent No. 1, at the time of his initial appointment was a Trained Graduate Teacher. The Respondent No.1 was appointed with effect from 13th November 1996. The Respondent No. 1 came to be terminated from the service with effect from 31st June, 1999. Being aggrieved by the said termination, the first Respondent herein preferred an appeal before the Presiding Officer, School Tribunal bearing Appeal No. 62 of 1999. The Tribunal by it's Judgment and Order dated 31st October 2000 allowed the appeal and directed reinstatement of the appellant with continuity of service and full backwages. Being aggrieved by the order passed by the Tribunal, the present petitioner preferred Writ Petition No.3160 of 2001 before this Court. This Court allowed the Writ Petition by the Judgment dated 14th March 2002. After setting aside the Judgment and Order passed by the Tribunal, this Court remanded the matter to the Tribunal for denovo enquiry and decision of the appeal. It will not be out of place at this

juncture to mention that before this Court delivered Judgment on 14th March 2002 disposing of Writ Petition No. 3160 of 2001, the Respondent no. 1 was already reinstated in service and thus while remanding the matter back to the Tribunal, this Court directed that the reinstatement already granted may not be disturbed. After the remand, the Tribunal again heard the parties and allowed the appeal vide Judgment and order dated 4/3/2003. Aggrieved by this order passed by the Tribunal, the present petitioner carried a Writ Petition in this Court bearing No. 916 of 2004. During the pendency of the Writ Petition, its so happened that the petitioner enquired from the Education Officer about the legality or otherwise of the appointment of the Respondent No. 1 and the Education Officer has informed the Petitioner that the appointment of the Respondent No. 1 illegal. The Petitioner proceeded to terminate the Respondent no. 1 with effect from 3rd February 2004. Aggrieved by this termination effected from 3/2/2004, during pendency of Writ Petition No. 916 of 2004, the Respondent no. 1 again preferred the appeal before the Tribunal bearing No. 135 of 2004. The Appeal no. 135 of 2004 challenging the termination with effect from 3/2/2004 came to be allowed by the Tribunal by its Judgment and order dtd. 2/3/2005.

Dissatisfied with the Judgment and Order passed by the Tribunal dtd. 2nd March 2005, Writ Petition no. 2141 of 2005 has been filed by the petitioner. It is undisputed factual position that in the year 1996 when the Respondent No.1 was appointed, the School was aided to the extent of 50 percent grants from the State and as of now it seems that the School is 100 per cent aided receiving cent percent grant from the State Government towards payment of salaries of its employees. In this fact situation, both the Writ Petitions have come up before this court for hearing and decision. What is relevant to note is that the Respondent NO. 1 is in service as Assistant Teacher since the year 1996 and has put in about 11 years of service. During his tenure of 10-11 years service, the Respondent no.1 was forced to litigate before the Tribunal and the High Court and the first Respondent has succeeded before the Tribunal in the appeals that he had filed calling in question the legality and validity of the order of termination issued by the petitioner. He was also reinstated in service pending the first Writ Petition. The Tribunal has recorded a categorical finding that the appointment of Respondent no.1 was against the permanent post and a clear vacancy. A further finding is recorded by the Tribunal that the Respondent No. 1’s

termination is illegal. The main ground of challenge putforth by the petitioner in this petition is that there is no sufficient workload available for the petitioner to engage the classes of physical education. The Respondent No.1 possesses qualification of M.A. B.P.Ed. and its a matter of common knowledge that the person possessing M.A. B.PED. qualification is trained and eligible to be appointed as a physical education Teacher. In the petitioner's School, according to the Petitioner so also the Education Officer, work is available only for one Teacher to engage the classes of physical education. It is further the case of the Petitioner and the Education Officer who is represented by the learned A.G.P. that already the physical education Teacher was appointed in the year 1994 i.e. prior to the appointment of the Respondent No. 1 and thus enough workload for the Respondent no. 1 is not available. To this effect, the Education Officer had communicated to the management. In this view of the factual position, the learned Counsel for the petitioner and the Education Officer submits that it is not possible to continue the Respondent no. 1 in service of the Petitioner's school. Per contra, the learned counsel for Respondent no. 1 has submitted that if full work is not available to

the teacher possessing B.P.Ed. qualification then the remaining workload can be made good by assigning subject classes. He submits that the Respondent no. 1 possesses M.A. B.P.Ed. qualification and as such can be assigned the balance of the workload of general subjects. It is in this peculiar situation that both the Writ Petitions are being considered. A permanent teacher working in a recognised and aided school has a protection of service provided under Rule 26 of MEPS Rules. Rule 26 postulates that "if a permanent employee is rendered excess on account of reduction of establishment owning to reduction in number of class or division or due to fall in number of pupils or any other bonafide reason of similar nature, such an employee would be entitled to absorption in some other recognised and aided school. As I am inclined to accept the submission of the petitioner and education officer that as of today there is no sufficient work available for the respondent no. 1 to engage the classes of physical education, I deem it fit to grant benefit of Rule 26 to the respondent No. 1 as the same would be in furtherance of cause of justice. Respondent No. 1 is working from 11 years and the tribunal has found that his appointment was against the permanent and clear post. If this be so, the respondent no. 1

has assumed permanency on completion of two years satisfactory service and has to be treated as a confirmed employee. Hence, in my opinion, the respondent no.1 is entitled to be absorbed in service by issuing appropriate directions to the Education Officer in that regard.

3) This brings me to the second contentious issue about the payment of backwages. Both the learned counsel appearing for the Petitioner and the Respondent no. 1 on instructions from their respective clients have agreed to settle all monetary claims of the Respondent no. 1 by payment of Rs.2,00,000/- towards full and final settlement which includes a sum of Rs.1,38,000/- which has been deposited before the executing Court at Pune. The Respondent is permitted to withdraw the said sum of Rs.1,38,000/- and the balance amount of Rs.62,000/- shall be paid by the petitioner to the Respondent no.1. On such payment being made within a period of 8 weeks, the Respondent no.1 shall have absolutely no monetary claims against the petitioner.

4) The learned AGP for the Education Officer pointed out that no monetary liability can be

fastened on the State Government or the Education Department, for the reason that the appointment of Respondent no.1 has not been approved till date despite orders passed in his favour by the Tribunal. As the monetary liability has been amicably resolved in between petitioner and Respondent no. 1, there is no question of fastening any monetary liability either on the State or Education Officer. In this view of the matter, the Writ Petitions partly succeed. The orders passed by the School Tribunal under the challenge are quashed and set aside.

5) I declare that the Respondent no. 1, Physical Education Teacher has assumed permanency in service on completion of two years with effect from his initial appointment i.e. 30th November 1996 and shall be treated as a deemed confirmed Assistant Teacher in physical education with effect from 30th November 1988. The Respondent no. 1 shall be entitled to continuity of service with all incidental and ancillary benefits flowing therefrom except backwages. The claim of backwages stands settled finally on payment of Rs.62,000/- by the petitioner to the Respondent no. 1 as indicated hereinabove. The Respondent no. 1 shall not have any monetary claims against anyone for the period

prior to passing of this Judgment and order. I direct the Respondent no.2, Education Officer to absorb the Respondent no. 1 as physical educational Teacher in some recognised and aided school. This exercise of absorption shall be completed on or before 30th July 2007, till then the Respondent no.1 shall be notionally taken to be in the employment of the petitioner. In case the Respondent no. 2 fails to grant absorption to the Respondent no. 1 by 30th July 2007, the Education Officer shall start releasing the salary in favour of Respondent no. 1 treating him to be in service from 1st August 2007. The petitioner shall pay balance amount of 62,000/- to the Respondent no. 1 within a period of two months from today. Rule is made absolute in above terms. No order as to costs. This judgment is rendered in the peculiar facts of this case and shall not be a binding precedent. Respondent no.1 is permitted to withdraw the amount deposited by the petitioner in executing Court.

(A.P. DESHPANDE, J.)